

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 11 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE PERTAINING TO SMOKING

WHEREAS, electronic cigarettes, also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor and other chemicals, turning chemicals, including highly addictive nicotine, into an aerosol that is inhaled by the user; and

WHEREAS, while recognizing that long term health effects of inhaling vapors and effects of secondhand vapors from electronic cigarettes are unknown, a 2009 study by the United States Food and Drug Administration as to the ingredients in a small sample of cartridges from two leading brands of e-cigarettes, found detectable levels of toxic chemicals and known carcinogens, including nitro, and in one sample diethylene, glycol, a chemical found in antifreeze; and

WHEREAS, researchers have found that exhaling e-cigarette vapors releases measurable amounts of carcinogens and toxins into the air, including nicotine, formaldehyde, and acetaldehyde, concluding that the impact of vapor inhalation into the human lung should be of primary concern; and

WHEREAS, there have been a number of reports alleging that the batteries to e-cigarettes have exploded either during charging or use by the smoker, with injuries reported in some cases; and

WHEREAS, pursuant to N.C.G.S. § 160A-174, cities in North Carolina may by ordinance define, prohibit, regulate or abate acts, omissions, or conditions, detrimental to the health, safety or welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Article II of Chapter 11 of the Code of Ordinances of the City of Asheville be amended as follows:

1. Sec. 11-31 (smoking on buses), be amended as follows:
 - (a) It shall be unlawful for any person to smoke tobacco or any other substance or carry lighted cigars, **lighted** cigarettes ~~or lighted pipes~~ **including the use of e-cigarettes**, on any bus operated as part of the local public transportation system of the City.
 - (b) Signs or posters giving notice of the smoking prohibition shall be installed and prominently displayed in each city bus. ~~as directed by the city transit authority.~~

2. Sec. 11-32 (Regulation of smoking in municipal buildings and on municipal grounds), be amended as follows:

- (a) It shall be unlawful for any person to smoke or carry a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product **including the use of e-cigarettes**, in any park or greenway, now or hereafter owned, leased, or occupied by the city; **e-cigarettes means any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge, excluding any product regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug and Cosmetic Act.**

3. Sec. 11-32 (b) be amended as follows:

- (b) It shall be unlawful for any person to smoke or carry a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product **including the use of e-cigarettes**, in any building or facility or the grounds of any building or facility, or portion thereof, now or hereafter owned, leased, operated, occupied, managed or controlled by the City, the **Greater** Asheville Regional Airport Authority, the Pack Place **Education,s** Arts and Science Center, Inc., the Asheville ~~Civic Center Commission~~, **US Cellular Center** or the Housing Authority of the City of Asheville, except in smoking areas which may be specially designated as follows:

4. Sec. 11-33(Smoking prohibited in municipal vehicles), be amended as follows:

It shall be unlawful for any person to smoke or carry a lighted cigarette, **lighted** cigar ~~or~~ **lighted** pipe, or any other lighted tobacco product **including the use of e-cigarettes**, in any vehicle now or hereafter owned or leased by the city.

5. Sec. 11-34 (Regulation of smoking in public places) be amended as follows:

It shall be unlawful for any person to smoke or carry a lighted cigarette, **lighted** cigar ~~or~~ **lighted** pipe, or any other lighted tobacco product **including the use of e-cigarettes**, in a public place, or portion thereof, wherein the owner or operator thereof has designated the premises or portion thereof a nonsmoking area and posted notice as set forth hereinafter.

6. Sec. 11-36 (a) (Violations) be amended as follows:

It shall be unlawful for any person to smoke **to include the use of e-cigarettes**, in any area where smoking is prohibited by the provisions of this article.

7. Sec. 11-37 (Penalties), be amended as follows:

Continuing to smoke **including the use of e-cigarettes** in violation of this article constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than \$50.00.

8. Sec. 11-38 (Other laws), be amended as follows:

This article shall not be construed to permit smoking **including the use of e-cigarettes** where it is otherwise prohibited by other applicable laws.

Section 2. That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsection, sentences, clauses, or phrases be declared invalid.

Section 3. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall be in full force and effect on the date of adoption.

Read, approved and adopted this ____ day of _____, 2015.

City Clerk

Mayor

Approved as to form:

City Attorney